

SECOND REGULAR SESSION

# SENATE BILL NO. 582

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3131S.011

## AN ACT

To repeal section 92.086, RSMo, and to enact in lieu thereof one new section relating to municipal taxation of telecommunication, with an emergency clause.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 92.086, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 92.086, to read as follows:

92.086. 1. On or before January 1, 2006, the director shall publish a list of the municipalities which have, prior to August 28, 2005, enacted ordinances imposing a business license tax on a telecommunications company. The list shall contain:

- (1) The name of the municipality imposing the tax;
- (2) The name of the tax as denoted by the municipality;
- (3) The citation to the municipal code provisions imposing the tax; and
- (4) The percentage of gross receipts.

The director shall not be required to include any figures for the percentage of gross receipts if the municipality in question at the time of August 28, 2005, had an ordinance which imposed a flat fee instead of a fee based on gross receipts as its business license tax. In compiling the list, the director shall collect information from telecommunications companies, municipalities, municipal codes, and other reliable sources.

2. (1) On or before February 1, 2006, all telecommunications companies in Missouri shall provide the director and the state auditor with the amount of municipal business license tax which they paid each Missouri municipality identified by the director in accordance with subsection 1 of this section for the previous four quarters. On or before February 1, 2006, all telecommunications

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 companies in Missouri shall provide the director and the state auditor with an  
21 itemized list establishing their gross receipts for the previous four quarters for  
22 each category of gross receipts in each municipality identified by the director in  
23 accordance with subsection 1 of this section upon which a sales tax is paid.

24 (2) On or before February 1, 2006, each municipality shall provide the  
25 director and state auditor with the total amount of tax revenue collected for the  
26 previous fiscal year of taxable gross receipts from telecommunications  
27 companies. Any inconsistency or dispute arising from the information provided  
28 by the municipalities and telecommunications companies shall be resolved  
29 through an audit performed by the state auditor.

30 3. Beginning on July 1, 2006, the director shall henceforth collect,  
31 administer, and distribute telecommunications business license tax revenues in  
32 accordance with the provisions of sections 92.074 to 92.095.

33 4. Notwithstanding the provisions of any municipal business license tax  
34 ordinance, effective July 1, 2006, all business license taxes shall be based solely  
35 and exclusively on those gross receipts of telecommunications companies for the  
36 retail sale of telecommunications services which are subject to taxation under  
37 sections 144.010 and 144.020, RSMo. Any provisions in any municipal taxing  
38 ordinances which provide different definitions, rules, or provisions are expressly  
39 preempted and are null and void.

40 5. The director is authorized to promulgate regulations to establish the  
41 appropriate procedures for collecting, administering, and distributing such taxes.  
42 A telecommunications company shall file a quarterly return with the director with  
43 an attached schedule setting forth the total amount of taxable gross receipts for  
44 the quarter and the amount of business license tax due to each municipality. The  
45 director shall distribute the appropriate amounts, as set forth in this section, to  
46 the municipalities. In exchange for its collection, administration, and distribution  
47 functions, the department of revenue shall retain a collection fee of up to one  
48 percent (not to exceed the actual costs incurred) on all funds collected and  
49 distributed and shall be allowed to collect the interest off such funds during the  
50 time between collection and distribution. In no event shall the director fail to  
51 distribute the collected funds to a municipality more than thirty days after the  
52 collection of the funds.

53 6. It is the intent of the general assembly that sections 92.074 to 92.095  
54 comply with article X, section 22 of the Missouri Constitution, so that the  
55 application of sections 92.074 to 92.095 shall have a revenue-neutral

56 effect. Because business license taxes shall now be based on the gross receipts  
57 subject to the sales tax, it is anticipated that the base of the existing business  
58 license taxes in most cases shall be broadened, so in order to comply with article  
59 X, section 22 of the Missouri Constitution, the municipality shall adjust the gross  
60 receipts percentage rate identified by the director in accordance with subsection  
61 2 of this section so that the amount collectible, in total from all  
62 telecommunications companies, excluding the collection fee authorized in  
63 subsection 5 as defined herein, before and immediately after enactment remains  
64 the same in each municipality. If the determination is made by a municipality  
65 that in order to comply with article X, section 22 of the Missouri Constitution the  
66 gross receipts percentage rate must be increased, such increase shall be passed  
67 by a majority vote of the qualified voters voting in that municipality. The  
68 existing tax base shall be an amount equal to the total amount of  
69 telecommunications business license taxes collected by a municipality for fiscal  
70 year 2005, increased by fifty percent of [the difference between such amount and]  
71 the business license tax receipts that would have been yielded by applying the  
72 gross receipts percentage rate identified in accordance with subsection 1 of this  
73 section to the total gross receipts for all wireless telecommunications services  
74 provided by telecommunications companies as identified in 47 U.S.C. Section  
75 332(D)(1) and 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to the  
76 municipality. Based upon the rate information received from the director under  
77 this section, each municipality shall, no later than April 1, 2006, promulgate and  
78 publish the revenue-neutral rates to be applied in each municipality. Such tax  
79 rates shall be the applicable business license tax rate for bills rendered on or  
80 after July 1, 2006. Any percentages in any ordinance that are contrary to that  
81 established by the municipality herein are null and void. If any municipal  
82 business license tax ordinance as of January 1, 2005, had a provision stating that  
83 the tax only applied to business customers, the new calculated rate under this  
84 section also shall be determined based only on business customers and shall  
85 apply only to business customers.

86 7. On or before April 1, 2007, the director, in consultation with the state  
87 auditor and municipalities, shall examine revenues collected and forecast whether  
88 a shortfall or excess in municipal revenues for each municipality is likely to occur  
89 for the fiscal year ending June 30, 2007, due to data reporting errors or other  
90 errors in the calculation of the revenue-neutral tax rate. Section 32.057, RSMo,  
91 shall not restrict the disclosure of information to perform such consultation. If

92 a shortfall or excess is expected, the director, after review and comment from  
93 municipalities and telecommunications companies, shall promulgate and publish  
94 an adjustment in the rate in such municipalities. Such tax rate adjustment, if  
95 necessary, shall apply to bills issued after July 1, 2007.

96 8. The director shall be notified in writing within thirty days of any  
97 change in the municipal business license tax rate adopted by a municipality. The  
98 director shall promulgate such rate changes, but such rate changes may only take  
99 effect on the first day of a calendar quarter and only after a minimum of ninety  
100 days notice from the director to a telecommunications company. Any subsequent  
101 increase in the business license tax rate passed through an ordinance by a  
102 municipality which is above that rate as established by the municipality under  
103 subsection 6 of this section shall be passed by a majority vote of the qualified  
104 voters voting in that municipality. No municipal tax rate shall exceed the cap  
105 provided in subsection 9 of this section.

106 9. Notwithstanding the provisions of subsections 3 to 8 of this section or  
107 any other provision of law to the contrary, for any municipality not subject to the  
108 provisions of subsection 10 of this section, the maximum rate of taxation on gross  
109 receipts shall not exceed five percent for bills rendered on or after July 1, 2006,  
110 except if the business license tax rate for any municipality, as calculated in  
111 subsection 6 of this section, or if necessary, subsection 7 of this section, is  
112 determined to be greater than five percent, then, notwithstanding the provisions  
113 of such subsections, the business license tax rates for such municipality on and  
114 after July 1, 2006, shall be as follows:

115 (1) For bills rendered between July 1, 2006, and June 30, 2008, the rate  
116 shall be the actual adjusted rate as determined by subsection 6 of this section, or,  
117 if necessary, subsection 7 of this section;

118 (2) For bills rendered between July 1, 2008, and June 30, 2010, the rate  
119 shall be half the sum of the rate determined in subdivision (1) of this subsection  
120 and five percent; and

121 (3) For all bills rendered on and after July 1, 2010, five percent.

122 10. (1) Any municipality which prior to November 4, 1980, had an  
123 ordinance imposing a business license tax on telecommunications companies  
124 which specifically included the words "wireless", "cell phones", or "mobile phones"  
125 in its business license tax ordinance as revenues upon which a business license  
126 tax could be imposed, and had not limited its tax to local exchange telephone  
127 service or landlines, and had taken affirmative action to collect such tax from

128 wireless telecommunications providers prior to January 15, 2005, shall not be  
129 required to adjust its business license tax rate as provided in subsection 6 of this  
130 section and shall not be subject to the provisions of subsection 9 of this section.

131 (2) Any municipality which has an ordinance or an amendment to an  
132 ordinance imposing a business license tax on telecommunications companies  
133 which was authorized or amended by a public vote subsequent to November 4,  
134 1980, and such authorization specifically included the terms "wireless", "cell  
135 phones", or "mobile telephones" as revenues upon which a business license tax  
136 could be imposed, and had not limited its tax to local exchange telephone service  
137 or landlines, and had taken affirmative action to collect such tax from wireless  
138 telecommunications providers prior to January 15, 2005, shall not be required to  
139 adjust its business license tax rate as provided in subsection 6 of this section and  
140 shall not be subject to the provisions of subsection 9 of this section.

141 11. For purposes of sections 92.074 to 92.095, the director and any  
142 municipality shall have the authority to audit any telecommunications  
143 company. Notwithstanding the provisions of section 32.057, RSMo, the director  
144 of revenue shall furnish any municipality with information it requests to permit  
145 the municipality to review and audit the payments of any telecommunications  
146 company.

147 12. The statute of limitations shall be three years for the alleged  
148 nonpayment or underpayment of the business license tax.

149 13. Any telecommunications company is authorized to pass through to its  
150 retail customers all or part of the business license tax.

151 14. The provisions of subsection 5 of section 144.190, RSMo, and  
152 subdivision (3) of subsection 12 of section 32.087, RSMo, shall apply to the tax  
153 imposed under sections 92.074 to 92.095.

154 15. Unless specifically stated otherwise in sections 92.074 to 92.095,  
155 taxpayer remedies, enforcement mechanisms, tax refunds, tax protests,  
156 assessments, and all other procedures shall be the same as those provided in  
157 chapter 144, RSMo.

158 16. Any rule or portion of a rule, as that term is defined in section  
159 536.010, RSMo, that is created under the authority delegated in this section shall  
160 become effective only if it complies with and is subject to all of the provisions of  
161 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and  
162 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
163 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective

164 date, or to disapprove and annul a rule are subsequently held unconstitutional,  
165 then the grant of rulemaking authority and any rule proposed or adopted after  
166 August 28, 2005, shall be invalid and void.

Section B. Because of the need to ensure the proper taxation of  
2 telecommunications services, section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace and safety, and is  
4 hereby declared to be an emergency act within the meaning of the constitution,  
5 and section A of this act shall be in full force and effect upon its passage and  
6 approval.

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Bill

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